It is said that where incumbrances affect only the physical condition of the property, and are obvious to the purchaser, he must have seen them and fixed his price with reference to such incumbrances. *Memmert* v. *McKeen*, 112 Pa. 315, 4 Atl. 542; *Janes* v. *Jenkins*, 34 Md. 1. But the knowledge that a third party claims an easement may often be the sole motive inducing him to demand the protection of a covenant. *Beach* v. *Miller*, 51 Ill. 206, 211. Such facts, even when they fairly evidence the intention of the parties to exclude the incumbrance from the covenant, would be excluded by the parol evidence rule. See *Demars* v. *Koehler*, 62 N. J. L. 203, 206, 41 Atl. 720, 721; *Holmes* v. *Danforth*, 83 Me. 139, 142, 21 Atl. 845, 846. The strongest argument for the exception is, that by the universal course of dealing, public highways over rural land have never been regarded as incumbrances, and that this should be considered in interpreting the covenant. *Harrison* v. *Des Moines, etc. R. Co.*, 91 Ia. 114, 58 N. W. 1081; *Patterson* v. *Arthurs*, 9 Watts (Pa.) 152; *Whitbeck* v. *Cook*, 15 Johns. (N. Y.) 483. In some jurisdictions especially this seems to be a settled custom. *Wilson* v. *Cochran*, 46 Pa. 229; *Schurger* v. *Moorman*, 20 Ida. 97, 117 Pac. 122. A similar result has been reached by statute in some states. PUB. STAT. VT., 1906, § 3952; REV. STAT. ILL., 1909, ch. 30, § 39. The principal case, however, cannot be supported on this line of reasoning, since the highway was neither known to the parties, nor in use at the time of the conveyance. *Howell* v. *Northampton R. R. Co.*, 211 Pa. 284, 60 Atl. 793. But it is said that a public highway is not depreciative, but appreciative of the value of the land, and so is not an incumbrance, but a benefit. *Harrison* v. *Des Moines, etc. R. Co., supra.* Aside from the fact that this is not always true, an easement, whether public or private, is an interference with the owner's right to absolute dominion over the land and in that respect an injury to him. The actual damage occasioned by it should affect the determination of damages rather than the question whether or not it is an incumbrance. *Kellogg* v. *Ingersoll, supra*; *Hubbard* v. *Norton*, 10 Conn. 422; *Kellogg* v. *Malin*, 50 Mo. 496; *Demars* v. *Koehler*, 62 N. J. L. 203, 205, 41 Atl. 720, 721. The principal case is contrary to the weight of authority. See cases collected in RAWLE, COVENANTS FOR TITLE, sec. 80–83.

DEEDS — CONDITIONS — VALIDITY OF CONDITION SUBSEQUENT IN RESTRAINT OF TRADE. — The plaintiff, a brewer, conveyed land, title to revest if a saloon should not be maintained on it, or if beer other than the plaintiff's should be sold therein. The condition being broken, the plaintiff brings an action to enforce the forfeiture against one holding under the original grantee. *Held*, that the plaintiff cannot enforce a forfeiture. *Ruhland* v. *King*, 143 N. W. 681 (Wis.).

A condition subsequent in a deed of land revesting title in the grantor is valid at common law. Such a condition is void, however, if contrary to public policy. *Randall* v. *Marble*, 69 Me. 310. See *Smith* v. *Barrie*, 56 Mich. 314, 317, 22 N. W. 816, 818. A condition to the effect that the premises conveyed should be used for a certain manufacturing purpose only has been held to be valid. *Sperry* v. *Pond*, 5 Ohio 387. The ground of the decision in the principal case, however, was that the condition as to buying the beer from the plaintiff only was an unlawful restraint of trade. The modern tendency has been to uphold contracts, if the restraint imposed is a reasonable one, whether total or partial. *Nordenfelt* v. *Maxim Nordenfelt Gun & Ammunition Co.*, [1894] A. C. (Eng.) 535; *Oakdale Mfg. Co.* v. *Garst*, 18 R. I. 484, 28 Atl. 973. Thus a contract to purchase goods of one firm only is not in unreasonable restraint of trade, although unlimited in time. *Brown* v. *Rounsavell*, 78 Ill. 589; *John Bros. Abergarn Brewery Co.* v. *Holmes*, [1900] 1 Ch. (Eng.) 188. On principle the restraint imposed in the principal case would seem to be reasonable, for it does not

appear that the condition was part of a scheme to monopolize, and no greater restrictions are laid down than necessary for the plaintiff's interest. Doubtless the decision can be explained because of the modern horror of forfeiture with the consequent willingness of the courts to stretch a point, if necessary, to avoid it. *Cf. Clement* v. *Burtis*, 121 N. Y. 708, 24 N. E. 1013.

ESTATES IN FEE SIMPLE — DETERMINABLE FEES IN AMERICA — PROPERTY TAKEN BY EMINENT DOMAIN. — Land belonging to the plaintiff was taken by a railroad by eminent domain proceedings under a statute which provided that the railroad should be "seised in fee . . . and hold and use for the purposes specified." The railroad when it no longer needed the land for its purpose sold it to the defendant. *Held*, that the railroad having only a determinable fee, on the abandonment the plaintiff was entitled. *Lithgow* v. *Pearson*, 135 Pac. 759 (Colo.).

Property can be taken by eminent domain proceedings for public purposes only. *In re Tuthill*, 163 N. Y. 133, 57 N. E. 303; *Edgewood Railway Company's Appeal*, 79 Pa. 257. Consequently merely such an interest in the property should be taken as is necessary to carry out the public purpose. *Conklin* v. *Old Colony R. Co.*, 154 Mass. 155, 28 N. E. 143; *Kansas Central Ry. Co.* v. *Allen*, 22 Kan. 285. It has been held that the legislature should be the judge of what this interest is. *Fairchild* v. *City of St. Paul*, 46 Minn. 540, 49 N. W. 325. The majority of courts, however, construe eminent domain statutes as authorizing the condemnation only of an easement. *Proprietors of Locks and Canals* v. *Nashua and Lowell R. R. Co.*, 104 Mass. 1; *Kellogg* v. *Malin*, 50 Mo. 496. Where the taker is the state or municipality, the fee simple is often held to pass. *Haldeman* v. *Penn. Central R. R.*, 50 Pa. 425; *Malone* v. *Toledo*, 34 Oh. St. 541. The principal case using the machinery of a determinable fee to accomplish the desired limitation of the interest seems to have but little following. *Matthieson & Hegeler Zinc Co.* v. *La Salle*, 117 Ill. 411, 8 N. E. 81. The effect of the Statute of *Quia Emptores* was to destroy the tenure formerly existing between the grantor of a fee simple and his grantee and therefore theoretically determinable fees can no longer be created where *Quia Emptores* is in force, as is the case in nearly all American jurisdictions. See GRAY, RULE AGAINST PERPETUITIES, §§ 31–41 a, 774–788; 17 HARV. L. REV. 297–316. But if a statute can be construed to authorize the creation of such an interest in certain cases it may be argued that it has to that extent repealed *Quia Emptores*. If this is sound it would seem that eminent domain statutes of the type in the principal case have created an exception to the general rule in favor of landowners whose property is taken by condemnation proceedings. It must furthermore be admitted that apart from any statutory provisions there is a tendency in the United States to ignore the theoretical difficulties and allow determinable fees in all cases. *First Universalist Society* v. *Boland*, 155 Mass. 171, 29 N. E. 524.

INTERSTATE COMMERCE — CONTROL BY STATES — RAILROAD REGULATION — REGULATIONS BY STATE COMMISSION AS TO DEMURRAGE. — The Michigan Railroad Commission passed certain demurrage rules applicable to all traffic beginning or ending within the state. These rules allowed shippers from one to three days longer for loading and unloading goods than the rules of the Interstate Commerce Commission. The plaintiff filed a bill to restrain the state commission from enforcing its rules. *Held*, that the commission will be enjoined. *Michigan Central R. Co.* v. *Michigan R. Commission*, 20 Det. Leg. News 946 (Sup. Ct., Mich., Oct. 11, 1913).

The court is right in holding that the rules are unconstitutional so far as they apply to interstate traffic, as being a regulation of interstate commerce as such. *Wabash, St. Louis & Pacific R. Co.* v. *Illinois*, 118 U. S. 557. See